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In the Supreme Court of the United States

October Term, 1972

No. 72-[illegible]

KEMP O. HIATT,
Petitioner,

vs.

STANADYNE, INC.,
Respondent.

On Petition for a Writ of Certiorari
To the United States Court of Appeals
For the Sixth Circuit

BRIEF FOR RESPONDENT IN OPPOSITION

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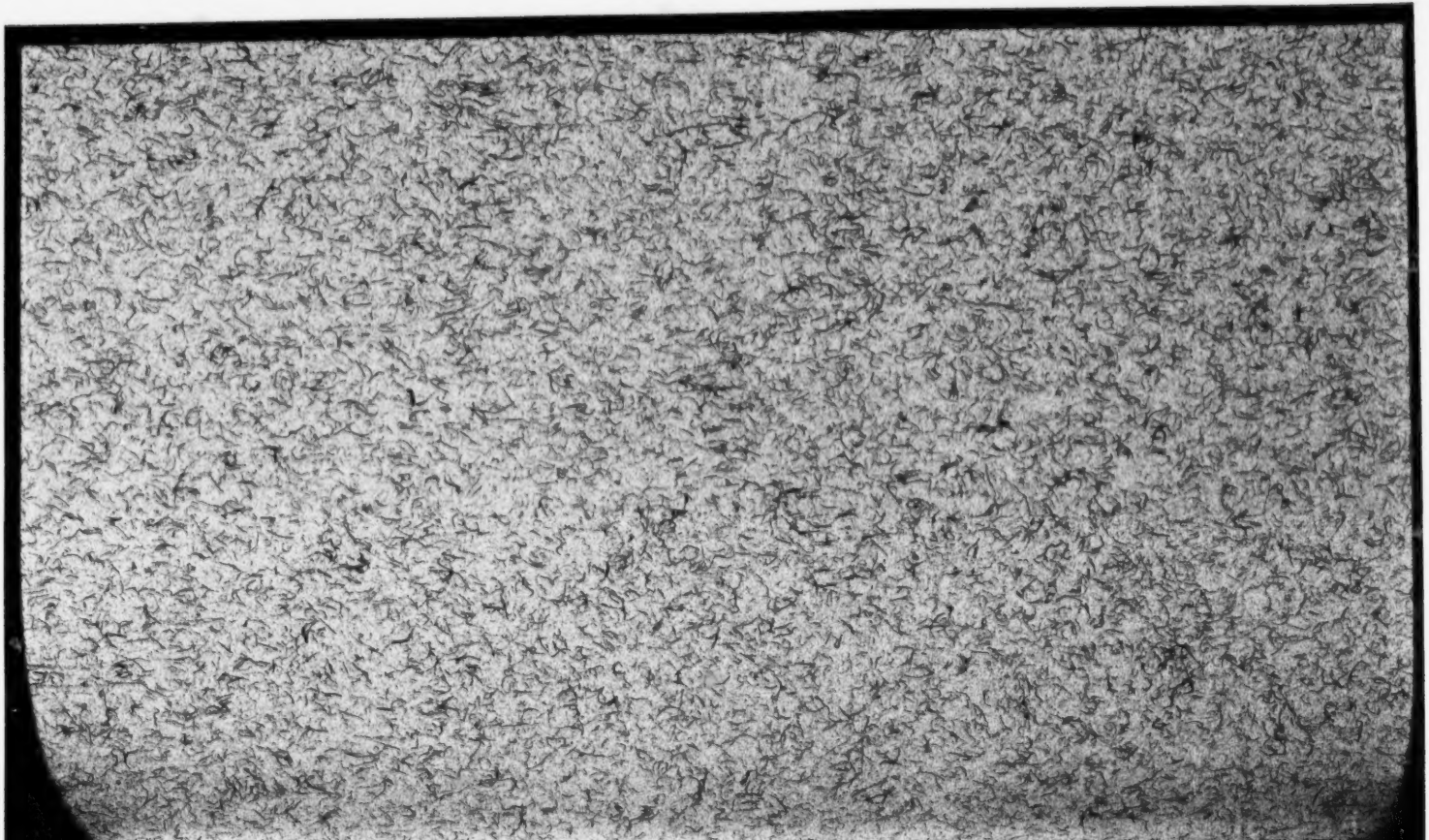

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TO THE UNITED STATES COURT OF APPEALS
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BRIEF FOR RESPONDENT IN OPPOSITION

OPINIONS BELOW

Identification of the opinions delivered in the courts below is set forth in the Petition.

JURISDICTION

The jurisdictional requisites are adequately set forth in the Petition.

CONSTITUTIONAL PROVISION AND RULES INVOLVED

The constitutional provision (U.S. Const. amend. XIV, § 1) and the rules (Fed. R. Civ. P. 4(d)(7) and 4(e); Ohio R. Civ. P. 4.3(A)(1)) involved are set forth in the Petition at pp. 2-4.

QUESTION PRESENTED FOR REVIEW

Whether consistent with the due process requirement of the Fourteenth Amendment to the United States Constitution, personal jurisdiction can be obtained in Ohio over a nonresident individual pursuant to Rules 4(d)(7) and 4(e) of the Federal Rules of Civil Procedure and Rule 4.3(A)(1) of the Ohio Rules of Civil Procedure, where the individual has purposefully availed himself of the privilege of acting or causing a consequence in Ohio, the cause of action arises from the individual's activities in Ohio, and the acts or consequences of the individual have substantial enough connection with Ohio to make jurisdiction over him reasonable.

STATEMENT OF THE CASE

During the early 1940's, the United States Patent Office granted a patent to Alfred M. Moen ("Moen") upon an invention for a single handle, core-type faucet ("Moen core faucet invention"). By an agreement dated May 14, 1945 ("1945 Agreement"), Moen granted to his then employer, Kemp O. Hiatt ("Hiatt"), petitioner, an exclusive license to manufacture and sell the Moen core faucet invention subject to the payment of royalties by Hiatt to Moen (App. 11).[1]

In 1947 Hiatt incorporated his machine shop business in the State of Washington under the name Ravenna Metal Products Corporation ("Ravenna"). By an Agreement dated July 5, 1947 ("1947 Agreement"), Hiatt granted to

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1. The abbreviation "App." shall be used herein to designate pages in the Appendix filed with the Court of Appeals, copies of which have been certified to this Court.

Ravenna an exclusive sub-license under the 1945 Agreement (App. 11).

In late 1954 or early 1955, Ravenna's request for a change in zoning to permit plant expansion was denied and Hiatt advised his personnel that the existing plant would have to be moved. Haitt instructed one of his employees to try to locate a new plant site; one of the areas suggested was Elyria, Ohio. Other employees were requested to prepare a lay-out of the proposed new plant (App. 34).

During this period of time, Hiatt was trying to locate an organization which might be interested in purchasing a controlling interest in, or otherwise acquiring, Ravenna. In furtherance of this objective, he contacted various concerns which had advertised in the Wall Street Journal expressing a desire to purchase a going business and also contacted large manufacturing concerns in the hope of promoting a sale or merger (App. 51-52).

Stanadyne, Inc.[2] ("Stanadyne"), respondent, learned from one of its customers, who knew of its need for a product line at its Elyria, Ohio plant and was also a supplier to Ravenna, that Ravenna was interested in relocating its faucet business (App. 34-35). During the summer of 1955, Hiatt met with representatives of Stanadyne who expressed to Hiatt an interest in purchasing Ravenna and moving the faucet production to Elyria, Ohio. Thereafter,

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2. Stanadyne is a Delaware corporation and the corporate successor to Standard Screw Company, a New Jersey corporation, and for purposes of continuity, "Stanadyne" shall be used herein to designate the respondent as well as its corporate predecessor. Chicago Screw Company (Chicago, Illinois), Hartford Machine Screw Company (Elyria, Ohio) were wholly-owned subsidiaries of Standard Screw Company. Stanadyne presently has manufacturing facilities in Hartford, Connecticut, Chicago, Illinois, Gary, Indiana and Elyria, Ohio; however, faucet production has always been carried out exclusively at the Elyria, Ohio plant.

Hiatt toured the Elyria, Ohio plant to determine if it was equipped to manufacture the faucet product line (App. 53-54, 57-58). At a meeting of Ravenna's Board of Directors on September 27, 1955, Hiatt reported that if the Stanadyne deal was consummated all faucets would be made at the Elyria, Ohio plant which was in need of work; it would also be the new location of the faucet sales department (App. 58-59). In the fall of 1955, Hiatt advised certain Ravenna personnel of the proposed sale to Stanadyne and the transfer of all faucet production to Elyria, Ohio. He further indicated that certain employees would be afforded an opportunity to move to Elyria, Ohio and thereby remain with the faucet operation. By late 1955, Ravenna employees were deciding which tools, equipment and parts would have to be moved from Seattle, Washington to Elyria, Ohio in order to manufacture the faucets at the new location (App. 35, 37).

Negotiations between the parties resulted in an Agreement, effective January 9, 1956, whereby Stanadyne acquired all of the issued and outstanding stock of Ravenna. At all times prior to the acquisition Hiatt was the majority stockholder and president of Ravenna (App. 11, 34, 37, 45-47). Since Stanadyne needed work for its Elyria plant, the Ohio situs of all future faucet production was a definite if unwritten condition precedent to Stanadyne's agreement to purchase Ravenna (App. 34, 38, 58-59). In June 1956, pursuant to a Plan of Liquidation and Dissolution, Stanadyne acquired all of the assets of Ravenna, including the 1947 Agreement (App. 11-12, 45-47). During the interim period, Ravenna employees, together with tools, equipment and parts moved to Elyria (App. 35, 37-38). Moen was one of the Ravenna employees who moved to Elyria, Ohio in 1956 (App. 38). All single handle, core-type faucets have been manufactured exclusively in Elyria,

Ohio from about April 1956 to date and Stanadyne has never manufactured any type of faucet in the State of Washington (App. 39-40).

After the acquisition in 1956, Hiatt was made a vice president of Stanadyne and placed in charge of the Ravenna Metal Products Division in Seattle, which manufactured non-faucet products. He remained in this position during the move to Elyria, Ohio. Hiatt resigned as vice president on June 25, 1958 (App. 40).

In the summer of 1956 and subsequent to the commencement of faucet production in Elyria, Ohio, Stanadyne, Hiatt and Moen entered into negotiations concerning Stanadyne's rights under the Moen core faucet invention. These negotiations culminated in an agreement dated June 27, 1957 ("1957 Agreement"), about which this controversy centers, whereby the 1945 and 1947 Agreements were cancelled and Moen granted to Stanadyne an exclusive license under the Moen core faucet invention subject to the payment of royalties by Stanadyne to Moen and Hiatt. Amendments to the 1957 Agreement were made by the parties thereto on August 11, 1961 and December 31, 1970 (App. 16-32, 40).

Since its commencement in 1956 of core-type faucet production in Elyria, Ohio, Stanadyne has paid royalties to Hiatt in excess of $1,000,000 based upon the Elyria manufacture and sale of faucets—these payments having been made not only on the "Core" type faucets but on two later developed faucets—the "Cartridge" and the "H-C" as well (App. 4). All faucet production records and royalty payment calculations are maintained and made at Elyria, Ohio. All royalty checks and reports have been mailed to Hiatt from Elyria, Ohio and all royalty checks through the first quarter of 1969 were drawn on the National City

Bank of Cleveland, Ohio (App. 42). On several occasions Hiatt or his counsel have written letters to Stanadyne in Elyria, Ohio with respect to questions arising under the 1957 Agreement or amendments thereto and all responses by Stanadyne have been prepared in and sent from Elyria, Ohio (App. 41).

In the spring of 1971, Stanadyne discovered that it had mistakenly paid royalties on the manufacture and sale of the "Cartridge" and "H-C" type faucets, which did not come within the scope of the Moen core faucet inventions and consequently were not covered by the 1957 Agreement. On June 22, 1971, Stanadyne advised Hiatt that it had mistakenly paid him royalties which he was not entitled to receive under the 1957 Agreement and that it would henceforth only pay royalties on the "Core" type faucet inventions. Hiatt rejected Stanadyne's position, insisted that royalty payments be made on all types of single handle faucets embodying Moen inventions and threatened litigation to compel such payment (App. 4-6).

Stanadyne commenced the present action in the United States District Court for the Northern District of Ohio, Eastern Division, to resolve the controversy between itself and Hiatt by obtaining a declaration of its rights and obligations under the 1957 Agreement and the restitution of funds mistakenly paid. Hiatt, a citizen and resident of the State of Washington, was served in Washington by certified mail pursuant to Rules 4(d)(7) and 4(e) of the Federal Rules of Civil Procedure and Rule 4.3 of the Ohio Rules of Civil Procedure. Thereafter, Hiatt filed a Motion to Dismiss and to Quash Service of Process ("Motion") on the ground that personal jurisdiction could not lawfully be obtained over him in Ohio. No question has been raised as to the form of process or method of service; the only issue raised is whether as a matter of constitu-

tional law district court has power to exercise jurisdiction over Hiatt.

On December 6, 1971, the District Court entered an Order granting the Motion and dismissing the Complaint with respect to Hiatt for lack of personal jurisdiction (Appendix to Petition, pp. 8-9). The only findings made by the District Court in granting the Motion are those set forth in its Order, which findings are reproduced below in their entirety for the Court's convenience:

> "1. That the defendant Hiatt has not purposefully availed himself of acting in the State of Ohio or causing a consequence in the State of Ohio.
>
> 2. That the case of *Southern Machine Co. v. Mohasco Industries, Inc.*, 401 F.2d 374 (6th Cir. 1968) is distinguishable from the facts in the present case.
>
> 3. That the defendant Hiatt has not transacted business in the State of Ohio as provided for in Ohio Civil Rule 4.3(A)(1)."

On October 26, 1972, the Sixth Circuit Court of Appeals reversed and remanded the case for further proceedings (Appendix to Petition p. 10)

ARGUMENT

I.

The Petition Does Not Present an Important Federal Question or a Conflict in Decisions, but Turns on Narrow Factual Considerations Limited to the Present Case

The issue in the present case turns upon a specific fact situation which is unique to the parties alone, and no amount of strained semantics can convert it into one warranting review by this Court. There is no important question of Federal constitutional law which requires a decision by this Court. Nor is there any conflict of decisions which compels review by this Court. All that is involved are the numerous contacts which petitioner had with the State of Ohio and the Court of Appeals' conclusion that such contacts subjected petitioner to personal jurisdiction in the Northern District of Ohio under Ohio's Long-Arm Statute.

The existence of personal jurisdiction over a nonresident under a state's long-arm statute "must obviously be worked out with reference to the facts of a particular case rather than in a statement of dogmatic rules of all-inclusive principles". *Velandra v. Regie Nationale Des Usines Renault*, 336 F.2d 292, 295 (6th Cir. 1964). This Court has repeatedly held that it will not grant certiorari "to review evidence and discuss specific facts." *United States v. Johnston*, 268 U.S. 220, 227 (1925). Accord *General Talking Pictures Corp. v. Western Electric Co.*, 304 U.S. 175, 178 (1938); *N.L.R.B. v. Waterman Steamship Corp.*, 309 U.S. 206, 208 (1940). Yet that is the precise function which petitioner now asks the Court to perform. This case does not present the type of situation which

necessitates consideration by this Court. Any review would necessarily relate only to the limited factual situation presented by the Petition and would not enlarge on any federal question of substance that has not already been decided by this Court. Therefore, respondent respectively submits that the petition should be denied.

II.

The Decision Below Is Manifestly Correct

In a trilogy of opinions—*International Shoe Co. v. State of Washington*, 326 U.S. 310 (1945), *McGee v. International Life Insurance Co.*, 355 U.S. 220 (1957) and *Hanson v. Denckla*, 357 U.S. 235 (1958)—this Court laid down the due process standard to be applied by the states in obtaining personal jurisdiction over a nonresident defendant. In *Southern Machine Co. v. Mohasco Industries, Inc.*, 401 F.2d 374 (6th Cir. 1968) (Appendix to Petition, pp. 11-31), the Sixth Circuit Court of Appeals had occasion to review in depth these opinions, and concluded that the following three criteria emerged therefrom and must be found to exist in each case where personal jurisdiction is imposed on a nonresident defendant:

(1) "the defendant must purposefully avail himself of the privilege of acting in the forum state or causing a consequence in the forum state";

(2) "the cause of action must arise from the defendant's activities there"; and

(3) "the acts of the defendant or consequences caused by the defendant must have a substantial enough connection with the forum state to make the

exercise of jurisdiction over the defendant reasonable." (401 F.2d at 381—footnote omitted).

The Court of Appeals applied these criteria to the operative facts of the present controversy and properly concluded that consistent with due process, personal jurisdiction could be and had been obtained over petitioner in Ohio.

Petitioner does not contend that these criteria are in conflict with the due process standard established by this Court. Instead, in his first argument, petitioner seeks review on the theory that these criteria are "impossible to understand and apply at the trial court level" (Petition, p. 9). Such an argument certainly does not rise to the level required for review by this Court. Furthermore, petitioner's theory in this respect is erroneous. Although, as pointed out by petitioner (Petition, p. 11) the Sixth Circuit has had, since the *Southern Machine* case, occasion to reverse district courts on the question of extra-territorial jurisdiction, it should be noted that the Sixth Circuit has also sustained district court rulings on this subject. See *Kroger Co. v. Dornbos*, 408 F.2d 813 (6th Cir. 1969); *Nationwide Motorist Assoc. of Mich. v. Freeman*, 405 F.2d 699 (6th Cir. 1969); *Tate v. Renault Inc.*, 402 F.2d 795 (6th Cir. 1968). Even if there were anything to petitioner's theory that the Sixth Circuit's guidelines are confusing to district courts, in the present case the criteria were applied by the Court of Appeals which enunciated them—not a trial court—and therefore what the district court may or may not have understood is of no consequence. Certiorari should not be granted on the basis of such a meritless argument.

Petitioner's second argument that the Sixth Circuit failed to follow the teachings of *Hanson v. Denckla, supra,* is totally unsupported by the record. To contend that this

case involves only the "unilateral activity" of respondent is factually erroneous. As more particularly set forth in the Statement of the Case, petitioner engaged in numerous activities which directly involved the State of Ohio. The Sixth Circuit was fully cognizant of this Court's admonition in the *Hanson* case and properly applied its mandate to the facts of the present action.

Petitioner's third argument borders on the unbelievable. To contend that a decision based entirely on and limited to a specific fact situation "will encourage and foster the widespread use of commercial blackmail between parties to business contracts" (Petition, p. 9) is unrealistic, and totally without legal support. It can hardly be suggested that petitioner is being "blackmailed" because after receiving over one million dollars in royalties and hoping to extract additional vast sums from Ohio he is called upon to defend an action in the sole jurisdiction from which the royalty payments emanate, and is intimately tied to events which he set in motion.

Petitioner's three arguments fail to remotely approach the minimum level of importance and consequence required to warrant review by this Court.

CONCLUSION

This Court has established the due process standard which must be met by the lower courts in applying state long-arm statutes before personal jurisdiction may be obtained over a nonresident defendant. Consideration by this Court of a particular finding pursuant to a given long-arm statute involves a factual consideration which is limited to a specific action and will not ultimately be of broad applicability. The due process standard was properly applied by the Sixth Circuit and for this reason, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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